

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
GREENBELT DIVISION

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2013 SEP -5 P 2:01

CLERK'S OFFICE
AT GREENBELT

BRETT KIMBERLIN,
Plaintiff,

v.

No. **RB**

RWT 13 CV 2580

ANONYMOUS BLOGGER
KIMBERLINUNMASKED,
Defendant.

COMPLAINT FOR DAMAGES FOR COPYRIGHT INFRINGEMENT

Plaintiff Brett Kimberlin hereby complains that Defendant KimberlinUnmasked has violated copyrights owned or controlled by Plaintiff in violation of the Copyright Act and the Digital Millennium Copyright Act.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights trademarks and unfair competition). This Court has personal jurisdiction over the Defendant because (i) Defendant committed the tortious conduct alleged in this Complaint in this State, and (ii) Defendant resides in this State and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State. Moreover, Defendant, without Plaintiff's consent, intentionally and willfully distributed over the Internet copyrighted works of Plaintiff through a Blogger.com account owned by Google Inc., an Internet Service Provider that does business and has a registered agent in this State and District.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (ii) the Plaintiff resides in this District and resides in this State; additionally, venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases) because Plaintiff resides in the District.

PARTIES

1. Plaintiff Brett Kimberlin resides in Bethesda, Maryland and is the Director of Justice Through Music, a 501c3 non profit dedicated to inspiring young people to engage in civic participation.
2. Defendant KimberlinUnmasked is an anonymous blogger who has dedicated his blog to attacking Plaintiff with false, and defamatory posts, pictures and graphics. Because Defendant is anonymous, he may or may not reside in the District.

STATEMENT

3. KimberlinUnmasked is what is called a "smear blog," dedicated to smearing Plaintiff in retaliation for his political leanings or some other unknown slight.
4. The owner of the KimberlinUnmasked has set up the site anonymously on a Google Blogspot server, and has set up a corresponding Twitter account called @KimberlinUnmask to promote his KimberlinUnmasked blog posts.
5. KimberlinUnmasked regularly posts defamatory statements about Plaintiff, accusing him of unfounded crimes and other nefarious activity. On August

30, 2013, Plaintiff filed suit in Montgomery County Circuit Court against KimberlinUnmasked and others for various torts, including defamation and invasion of privacy. See Kimberlin v. Aaron Walker, et al, No. Cv 380996.

6. Plaintiff is a musician, composer, and video/audio producer, who writes and records music about important social issues. Some of these songs are turned into music videos and placed on the Internet, including YouTube, for social commentary and education.
7. All of Plaintiff's music is copyrighted by Plaintiff. All of the videos created from those songs are copyrighted either by Plaintiff individually or by Justice Through Music, which he directs.
8. KimberlinUnmasked regularly copies photographs from these copyrighted videos and posts them on his site, without permission, compensation or consent of Plaintiff. KimberlinUnmasked alters some of these photographs by superimposing Plaintiff's face on to other backgrounds, for example in a Nazi uniform. Others he makes into collages using copyrighted photos to create an impression not intended by the original copyrighted photo.
9. On or about July 27, 2013, Plaintiff sent a demand to KimberlinUnmasked using the "Contact" form on his site to remove all copyrighted photos of Plaintiff from his site.
10. KimberlinUnmasked responded to Plaintiff's demand, by posting the following on his site on July 29, 2013: "Your time for telling people what to do is drawing to an end, Brett."

11. KimberlinUnmasked then posted additional copyrighted photographs on his site.

12. KimberlinUnmasked has posted copyrighted photographs on the following posts.

<http://kimberlinunmasked.blogspot.com/2013/08/brett-kimberlin-wants-us-to-take-down.html>

<http://kimberlinunmasked.blogspot.com/2013/07/notice-to-brett-kimberlin.html>

<http://kimberlinunmasked.blogspot.com/2013/07/brett-kimberlin-peace-order-hearing.html>

<http://kimberlinunmasked.blogspot.com/2013/07/brett-kimberlin-accuses-wife-of.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlins-explanation-for-epoxy.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlin-denied-involvement-in.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlin-bombing-charges-same-as.html>

<http://kimberlinunmasked.blogspot.com/2013/05/brett-kimberlin-and-irs.html>

<http://kimberlinunmasked.blogspot.com/2013/05/shipley-gets-surprise.html>

<http://kimberlinunmasked.blogspot.com/2013/05/the-many-faces-of-brett-kimberlin.html>

<http://kimberlinunmasked.blogspot.com/2013/04/why-did-prosecutors-refuse-to-charge.html>

<http://kimberlinunmasked.blogspot.com/2013/04/brett-kimberlin-is-in-no-way-comparable.html>

<http://kimberlinunmasked.blogspot.com/2013/03/brett-kimberlin-doesnt-like-being-mocked.html>

<http://kimberlinunmasked.blogspot.com/2013/03/cavete-idus-martias.html>

<http://kimberlinunmasked.blogspot.com/2013/03/brett-kimberlin-still-pervert-racist.html>

<http://kimberlinunmasked.blogspot.com/2013/02/who-is-brett-kimberlin.html>

13. KimberlinUnmasked removed all signs of Plaintiff's copyright from the photos he used and distributed, and provided no credits or attribution to the real copyright.

14. On one collage dated August 1, 2013, KimberlinUnmasked actually superimposed text on copyrighted photographs saying that the photographs were the copyright of KimberlinUnmasked—"Copyright 2013 KimberlinUnmasked."

<http://kimberlinunmasked.blogspot.com/2013/08/brett-kimberlin-wants-us-to-take-down.html>

15. KimberlinUnmasked used Plaintiff's photographs to add value to his blog, increase traffic to it, move its ranking up on search engines, and drive traffic to other sites with which he is associated in order to secure donations.

**COUNT I
REMOVAL AND ALTERATION OF COPYRIGHT**

16. Plaintiff re-alleges paragraphs 1-14 above.

17. KimberlinUnmasked, without consent, intentionally removed and altered Plaintiff's copyright notice and distributed the photographs, knowing that Plaintiff's copyright notice had been removed or altered, knowing or having

reasonable grounds to know that such removal or alteration would induce, enable, facilitate, or conceal a copyright infringement in violation of 17 USC 1202(b).

18. As a direct and proximate result of KimberlinUnmasked's wrongful conduct, Plaintiff has suffered damages and so is entitled to the remedies set forth in 17 USC 1203.

19. Specifically, Plaintiff is entitled to and seeks statutory damages pursuant to 17 USC 1203(c)(3)(B), and costs of litigation pursuant to 17 USC 1203 (b).

**COUNT II
FALSE COPYRIGHT**

20. Plaintiff re-alleges paragraphs -14 above.

21. KimberlinUnmasked, without consent of Plaintiff or law, knowingly and with intent to induce, enable, facilitate or conceal infringement, provided copyright management information over photos used in the collage in the August 1, 2013 post, that is false, in violation of 17 USC 1202(a)(1).

22. KimberlinUnmasked intentionally and willfully falsely asserted copyright of the photos used in the August 1, 2013 post.

23. As a direct and proximate result of KimberlinUnmasked's wrongful conduct, Plaintiff has suffered damages and so is entitled to the remedies set forth in 17 USC 1203.

24. Specifically, Plaintiff is entitled to and seeks statutory damages pursuant to 17 USC 1203(c)(3)(B), and costs of litigation pursuant to 17 USC 1203 (b).

**COUNT III
INTENTIONAL DISTRIBUTION OF FALSE COPYRIGHT**

25. Plaintiff re-alleges paragraphs 1-14 above.
26. KimberlinUnmasked intentionally and willfully falsely asserted copyright of the photos used in the August 1, 2013 post and distributed those photographs on the Internet.
27. By distributing false copyright over photos used in the collage in the August 1, 2013 post, KimberlinUnmasked has violated 17 USC 1202(a)(2).
28. As a direct and proximate result of KimberlinUnmasked's wrongful conduct, Plaintiff has suffered damages and so is entitled to the remedies set forth in 17 USC 1203.
29. Specifically, Plaintiff is entitled to and seeks statutory damages pursuant to 17 USC 1203(c)(3)(B), and costs of litigation pursuant to 17 USC 1203 (b).

**COUNT IV
COPYRIGHT INFRINGEMENT**

30. Plaintiff re-alleges paragraphs 1-14 above.
31. KimberlinUnmasked did not have authorization of Plaintiff or the law to reproduce, distribute, display or create derivative works of the photographs.
32. KimberlinUnmasked has not compensated Plaintiff for reproducing, displaying and distributing the photographs.
33. KimberlinUnmasked violated Plaintiff's rights under 17 USC 106, specifically his right to (1) reproduce the copyrighted work in copies; (2) prepare derivative works based on the copyrighted work; (3) distribute copies of the

copyrighted work to the public by whatever means, including for remuneration, and (4) display the copyrighted work publicly.

34. As a direct and proximate result of his wrongful conduct,

KimberlinUnmasked has realized and continues to realize value and benefits rightly belonging to Plaintiff. Accordingly, Plaintiff is entitled to and seeks an award of actual damages and profits pursuant to 17 USC 5004(b).

35. In the alternative, Plaintiff is entitled to and seeks statutory damages for KimberlinUnmasked's infringement, including fees and costs, pursuant to 17 USC 504(c)(1) and 505.

36. The infringement by KimberlinUnmasked was willful and performed with knowledge that the reproduction, display, and distribution of the photographs was unauthorized. Therefore, Plaintiff is entitled to the recovery of enhanced statutory damages pursuant to 17 USC 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A) Issue an order finding that KimberlinUnmasked's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act, 17 USC 101 et seq.;

(B) Permanently enjoin Defendant and all other persons who are in active concert or participation with KimberlinUnmasked from continuing to infringe Plaintiff's copyrighted works;

(B) Order that KimberlinUnmasked delete and permanently remove the digital media files relating to Plaintiff's works from each of the computers under Defendant's possession, custody or control;

(C) Order that KimberlinUnmasked delete and permanently remove the infringing copies of the works KimberlinUnmasked has on computers under

KimberlinUnmasked's possession, custody or control;

(D) Order that KimberlinUnmasked pay Plaintiff all damages in under 17 USC 504(b); Alternatively, award the maximum statutory damages in the amount of \$30,000 for each infringement pursuant to 17 U.S.C. § 504(c)(1), or such other amount as may be proper pursuant to 17 USC 504;

(E) Award Plaintiff statutory damages in the amount of \$150,000 per infringed Work pursuant to 17 USC 504(a) and (c) or such other amount as may be proper pursuant to 17 USC 504;

(F) Award Plaintiff actual damages suffered for each violation of 17 USC 1202(a) and (b), pursuant to 17 USC 1203(c)(2), or such other amount as may be proper pursuant to 17 USC 1203;

(G) Award Plaintiff maximum statutory damages in the amount of \$25,000 for each violation of 17 USC 1202(a) and (b) pursuant to 17 USC 1203(c)(3)(B), or such other amount as may be proper pursuant to 17 USC 1203; and

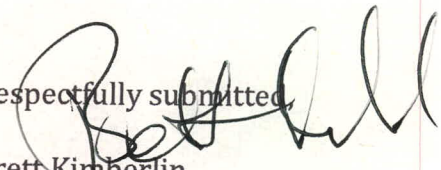
(H) Grant Plaintiff any other and further relief this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: September 5, 2013

Respectfully submitted,


Brett Kimberlin
8100 Beech Tree Road
Bethesda, MD 20817